

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 11-20129  
11-20066

VICTOR CARLOS CASTANO,

Defendant.

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**OPINION AND ORDER DENYING DEFENDANT'S MOTION FOR SUBPOENAS**

On November 17, 2018, Defendant Victor Carlos Castano filed an Ex Parte Motion for Issuance of Subpoenas Duces Tecum in Aid of Sentencing. He seeks information from:

a) a magazine publisher, for documents relating to Defendant and trial witness Keith McFadden from 2009 to 2012,

b) a brother of trial witness Anthony Clark, for documents showing such person's presence in Michigan between July and October 2014, and

c) a jail facility for records relating to trial witness Anthony Clark between July 2014 to April 2015.

He posits that this information will aid the court in sentencing by showing that:

a) McFadden did not contact defendant through the magazine's website as McFadden claimed to have motivated his approach to the FBI, and

b) Mark Clark was not in Michigan and therefore Anthony Clark was not truthful about Mark Clark being accosted by a member of the Highwaymen, and

c) jail records do not support Anthony Clark's claim to have been assaulted by another inmate, Voltz.

Having reviewed the motion, the court is not persuaded that the requirements for a subpoena under Federal Rule of Criminal Procedure 17 are met.

Defendant has proffered an explanation for why the subpoenas relate to his sentencing, but the court finds that they are of negligible value, either separately or collectively. It appears that Defendant seeks merely to chip away at small pockets of evidence submitted to the jury and/or offered for no more than a marginal benefit of sentencing. As far as the court can see, none of the incidents or encounters at issue affect the calculation of the guideline range in any way nor amount to more than background information.

The verdict was rendered in December 2015; the presentence report was presented first in March 2016. Defendant has had ample opportunity to seek out such information. The motion was presented a scant few weeks before sentencing, and no explanation for delay has been offered. Indeed, it is unlikely that, if granted, the materials would be returned in time for sentencing. Worthy of some note is that the court only recently agreed to adjourn the sentencing a full month from November 15, 2018, to December 17, 2018 at Defendant's request. After the court granted that request and adjourned the sentencing, defense counsel asked the court's staff to adjourn the sentencing *again*. This request was declined, and shortly thereafter this motion followed. While the court denies the motion on the merits, because it is not persuaded that the requested material is necessary, the court also denies the motion as untimely. Accordingly,

IT IS ORDERED that the Motion for Issuance of Subpoenas (Dkt. # 2349) is  
DENIED.

s/Robert H. Cleland  
ROBERT H. CLELAND  
UNITED STATES DISTRICT JUDGE

Dated: November 30, 2018

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, November 30, 2018, by electronic and/or ordinary mail.

s/Lisa Wagner  
Case Manager and Deputy Clerk  
(810) 292-6522

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